

MONTANA LEGISLATIVE HISTORY

Chapter 404 19 99

Bill H 526 S _____

Original bill & history ✓ c

H. Committee on Bus. + Lab.

Hearing Date(s) 2/11 ✓ c

Exec. Action 2/17 ✓ c

_____ c

_____ c

Date Out _____ c

S. Committee on Bus. + Ind.

Hearing Date(s) 3/11 ✓ c

Exec. Action 3/11 ✓ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes ✓ No

Committee _____

Report _____

1

2 INTRODUCED BY

(Primary Sponsor)

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A MONTANA DEFERRED DEPOSIT LOAN ACT TO

5 BE ADMINISTERED BY THE DEPARTMENT OF COMMERCE; AND PROVIDING FOR LICENSURE,

6 DISCLOSURE REQUIREMENTS, COMPLAINT PROCEDURES, CONTRACT PROVISIONS, RULEMAKING

7 AUTHORITY, CIVIL REMEDIES, AND CRIMINAL PENALTIES."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10

11 NEW SECTION. Section 1. Short title. [Sections 1 through 14] may be cited as the "Montana
12 Deferred Deposit Loan Act".

13

14 NEW SECTION. Section 2. Purpose -- rules. (1) The purpose of [sections 1 through 14] is to
15 protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the
16 credit marketplace when the lenders are unregulated.

17 (2) The department may adopt rules to implement the provisions of [sections 1 through 14]. The
18 rules may include but are not limited to rules establishing forms and procedures for licensing, rules
19 pertaining to acceptable practices at a business location, rules establishing disclosure requirements, and
20 rules establishing complaint and hearing procedures.

21

22 NEW SECTION. Section 3. Definitions. For the purposes of [sections 1 through 14], the following
23 definitions apply:

24 (1) "Check" means a negotiable instrument, as defined in 30-3-104, that is drawn on a bank and
25 is payable on demand at the maturity of a deferred deposit loan.

26 (2) "Consumer" means a natural person who, singly or jointly with another natural person, enters
27 into a deferred deposit loan.

28 (3) "Deferred deposit lender" or "licensee" means a person engaged in the business of making
29 deferred deposit loans.

30 (4) "Deferred deposit loan" means an arrangement, including all representations made by the

1 deferred deposit lender whether express or implied, in which:

2 (a) a person accepts a check dated on the date the check is written and agrees to hold the check
3 for a period of days prior to deposit or presentment; or

4 (b) a person accepts a check dated subsequent to the date on which the check is written and
5 agrees to hold the check for deposit or presentment until the date written on the check.

6 (5) "Department" means the department of commerce.

7 (6) "Person" means a natural person, sole proprietorship, firm, partnership, corporation, or other
8 entity.

9

10 **NEW SECTION. Section 4. Scope.** (1) [Sections 1 through 14] apply to deferred deposit lenders
11 and to persons who facilitate, enable, or act as a conduit for persons making deferred deposit loans.

12 (2) [Sections 1 through 14] do not apply to:

13 (a) banks, savings and loan associations, credit unions, or other state or federally regulated
14 financial institutions; or

15 (b) retail sellers who cash checks incidental to or independent of a sale and who do not charge
16 more than \$2 per check for the service.

17

18 **NEW SECTION. Section 5. License -- business locations --rules.** (1) A person may not engage
19 in or offer to engage in the business of making deferred deposit loans unless licensed by the department.
20 The department may not issue or renew a license unless findings are made that:

21 (a) the financial responsibility, experience, character, and general fitness of the applicant warrant
22 the belief that the business will be operated lawfully and fairly and within the provisions of [sections 1
23 through 14];

24 (b) the applicant has unencumbered assets of at least \$25,000 for each location;

25 (c) the applicant has provided a sworn statement that the applicant has not used in the past and
26 will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred
27 deposit loans or any civil process to collect the payment of deferred payment loans not generally available
28 to creditors to collect on loans in default; and

29 (d) other information that the department considers necessary has been provided.

30 (2) A license may not be issued for longer than 1 year, and a renewal of a license may not be

1 provided if the licensee has violated a provision of [sections 1 through 14].

2 (3) Each licensee shall post a bond in the amount of \$10,000 for each location. The bond must
3 continue in effect for 2 years after the licensee ceases operation in the state. The bond must be available
4 to pay damages and penalties to consumers harmed by any violation of [sections 1 through 14].

5 (4) More than one place of business may not be maintained under the same license, but the
6 department may issue more than one license to the same licensee upon compliance with the provisions
7 of this section governing issuance of a single license.

8 (5) A licensee may not conduct the business of making deferred deposit loans under [sections
9 1 through 14] within any office, suite, room, or place of business in which any other business is solicited
10 or engaged in unless, in the opinion of the department, the other business would not be contrary to the
11 best interests of consumers.

12

13 **NEW SECTION.** Section 6. License revocation. (1) If the department finds, after due notice and
14 hearing or opportunity for hearing, as provided in the Montana Administrative Procedure Act, that a
15 licensee or an officer, agent, employee, or representative of the licensee has violated any of the provisions
16 of [sections 1 through 14], has failed to comply with the rules, regulations, instructions, or orders
17 promulgated by the department, has failed or refused to make required reports to the department, or has
18 furnished false information to the department, the department may issue an order revoking or suspending
19 the right of the licensee, directly or through an officer, agent, employee, or representative, to do business
20 in this state as a licensee.

21 (2) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or
22 criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

23

24 **NEW SECTION.** Section 7. Complaint procedure. The department shall maintain a list of licensees
25 that is available to interested persons and to the general public. The department shall also establish by
26 rule a procedure under which an aggrieved consumer or any member of the public may file a complaint
27 against a licensee or an unlicensed person who violates any provision of [sections 1 through 14]. The
28 department may hold hearings upon the request of a party to the complaint, make findings of fact or
29 conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement
30 agency for prosecution for a violation of [sections 1 through 14], seek injunctive or other relief in district

1 court, or suspend or revoke a license granted under [sections 1 through 14].

2

3 **NEW SECTION. Section 8. Information and annual reports.** (1) Each licensee shall keep and use
4 books, accounts, and records that will enable the department to determine if the licensee is complying
5 with the provisions of [sections 1 through 14] and maintain any other records required by the department.
6 The department is authorized to examine the records at any reasonable time. The records must be kept
7 for 4 years following the last entry on a loan and must be kept according to generally accepted accounting
8 procedures that include an examiner being able to review the recordkeeping and reconcile each consumer
9 loan with documentation maintained in the consumer's loan file records.

10 (2) Each licensee shall file, on forms prescribed by the department, an annual report with the
11 department on or before March 31 for the 12-month period in the preceding year ending as of December
12 31. The report must disclose in detail and under appropriate headings:

13 (a) the resources, assets, and liabilities of the licensee at the beginning and the end of the period;

14 (b) the income, expense, gain, and loss, a reconciliation of surplus or net worth with the balance
15 sheets, and the ratios of the profits to the assets reported;

16 (c) the total number of deferred deposit loans made in the year ending as of December 31 of the
17 previous year;

18 (d) the total number of deferred deposit loans outstanding as of December 31 of the previous
19 year;

20 (e) the minimum, maximum, and average dollar amount of checks for which deposits were
21 deferred in the year ending as of December 31 of the previous year;

22 (f) the average annual percentage rate and the average number of days that the deposit of a
23 check was deferred during the year ending as of December 31 of the previous year;

24 (g) the total number and dollar amount of returned checks, the total number and dollar amount
25 of checks recovered, and the total number and dollar amount of checks charged off during the year ending
26 as of December 31 of the previous year; and

27 (h) verification that the licensee has not used a criminal process or caused a criminal process to
28 be used in the collection of any deferred deposit loans or used any civil process to collect the payment
29 of deferred payment loans not generally available to creditors to collect on loans in default during the year
30 ending as of December 31 of the previous year.

1 (3) A report must be verified by the oath or affirmation of the owner, manager, or president of
2 the deferred deposit lender.

3 (4) (a) If a licensee conducts another business or is affiliated with other licensees under [sections
4 1 through 14] or if any other situation exists under which allocations of expense are necessary, the
5 licensee shall make the allocation according to appropriate and reasonable accounting principles as
6 approved by the department.

7 (b) Information about any other business conducted on the same premises where deferred deposit
8 loans are made must be provided as required by the department.

9 (5) Each licensee shall file a copy of the contract described in [section 9] with the department
10 prior to the date of commencement of business at each location, at the time any changes are made to
11 the documents or schedule, and annually upon renewal of the license. These documents must be
12 available to interested parties and to the general public.

13

14 NEW SECTION. **Section 9. Loan requirements.** (1) Each deferred deposit loan must have a
15 minimum term of not less than 2 weeks for each \$50 owed on the loan.

16 (2) A consumer must be permitted to make partial payments, in not less than \$5 increments on
17 the loan at any time, without charge.

18 (3) The amount of the deferred deposit loan may not exceed \$300.

19 (4) After each payment is made on a loan, the licensee shall give to the person making the
20 payment a signed and dated receipt showing the amount paid and the balance due on the loan.

21 (5) The minimum amount of a deferred deposit loan is \$50.

22 (6) The check written by the consumer in a deferred deposit loan must be made payable to the
23 licensee.

24 (7) Upon receipt of the check from the consumer for a deferred deposit loan, the licensee shall
25 immediately stamp the back of the check with an endorsement that states: "This check is being
26 negotiated as part of a deferred deposit loan pursuant to [sections 1 through 14] and any holder of this
27 check takes it subject to all claims and defenses of the maker".

28 (8) The licensee shall provide the consumer, or each consumer if there is more than one, with a
29 copy of the loan documents described in [section 10] prior to the consummation of the loan.

30 (9) The holder or assignee of any check written by a consumer in connection with a deferred

1 deposit loan takes the instrument subject to all claims and defenses of the consumer.

2

3 **NEW SECTION.** **Section 10. Required disclosures.** (1) Before entering into a deferred deposit
4 loan, the licensee shall deliver to the consumer a pamphlet prepared by or at the direction of the
5 department that:

6 (a) explains, in simple language, all of the consumer's rights and responsibilities in a deferred
7 deposit loan transaction;

8 (b) includes a toll-free number to the department's office that handles concerns or complaints by
9 consumers; and

10 (c) informs consumers that the department's office can provide information about whether a
11 lender is licensed, whether complaints against the lender have been filed with the department, and the
12 resolution of the complaints.

13 (2) Licensees shall provide consumers with a written agreement on a form specified or approved
14 by the department that can be kept by the consumer, which must include the following information:

15 (a) the name, address, and phone number of the licensee making the deferred deposit loan and
16 the name and title of the individual employee who signs the agreement on behalf of the licensee;

17 (b) an itemization of the fees and interest charges to be paid by the consumer;

18 (c) disclosures required under any other laws of this state;

19 (d) a clear description of the consumer's payment obligations under the loan;

20 (e) a statement that must be initialed by the consumer that states: "WARNING: The fees and
21 interest charged on deferred deposit loans made at this institution may be substantially higher than those
22 charged at other financial institutions."; and

23 (f) in a manner that is more conspicuous than the other information provided in the loan document
24 and that is in at least 14-point bold typeface, a statement that "you cannot be prosecuted in criminal
25 court for collection of this loan". The statement must be located immediately preceding the signature of
26 the consumer.

27

28 **NEW SECTION.** **Section 11. Permitted fees.** (1) A licensee may not charge or receive, directly
29 or indirectly, any interest, fees, or charges except those specifically authorized by this section.

30 (2) A licensee may not charge more than a \$5 administrative fee for each deferred deposit loan

1 entered into with a consumer.

2 (3) In addition to the service fee, the licensee may not charge interest on the amount of cash
3 delivered to the consumer in a deferred deposit loan at a rate greater than 36% a year. The consumer
4 must be informed of the daily rate of interest charged on the loan in dollars and cents. The rate charged
5 on the outstanding balance after maturity may not be greater than the rate charged during the loan term.
6 Charges on loans must be computed and paid only as a percentage of the unpaid principal balance or
7 portion of the unpaid principal balance. For the purposes of this section, "principal balance" means the
8 balance due and owing exclusive of any interest, service, or other loan-related charges.

9 (4) If there are insufficient funds to pay a check on the date of presentment, a licensee may
10 charge a fee, not to exceed the lesser of \$15 or the fee imposed upon the licensee by the financial
11 institution. Only one fee may be collected pursuant to this subsection with respect to a particular check
12 even if it has been redeposited and returned more than once. A fee charged pursuant to this subsection
13 is a licensee's exclusive charge for late payment.

14 (5) When a loan is repaid before its due date, unearned interest charges must be rebated to the
15 consumer based on a method at least as favorable to the consumer as the actuarial method.

16

17 **NEW SECTION. Section 12. Prohibited acts.** A licensee making deferred deposit loans may not
18 commit, or have committed on behalf of the licensee, any of the following prohibited acts:

19 (1) engaging in the business of deferred deposit lending unless the department has first issued
20 a valid license;

21 (2) threatening to use or using a criminal process in this or any other state to collect on the loan
22 made to a consumer in this state or any civil process to collect the payment of deferred payment loans
23 not generally available to creditors to collect on loans in default;

24 (3) altering the date or any other information on a check received from a consumer;

25 (4) using any device or agreement that would have the effect of charging or collecting more fees,
26 charges, or interest than those allowed by [sections 1 through 14], including but not limited to entering
27 into a different type of transaction or renewing or rolling over a loan with the consumer;

28 (5) engaging in unfair, deceptive, or fraudulent practices in the making or collection of a deferred
29 deposit loan;

30 (6) entering into a deferred deposit loan with a consumer that is unconscionable. In determining

1 whether a deferred deposit loan transaction is unconscionable, consideration must be given to, but is not
2 limited to, whether the amount of the loan exceeds 25% of the consumer's net income for the term of
3 the loan.

4 (7) charging to cash a check representing the proceeds of the deferred deposit loan;

5 (8) using or attempting to use the check provided by the consumer in a deferred deposit loan as
6 security for purposes of any state or federal law;

7 (9) accepting payment of the deferred deposit loan through the proceeds of another deferred
8 deposit loan provided by the same licensee or any affiliate;

9 (10) making more than one deferred deposit loan to a consumer at a time;

10 (11) making a deferred deposit loan that, when combined with another outstanding deferred
11 deposit loan owed to another licensee, exceeds a total of \$300 when combining the face amount of the
12 checks written in connection with each loan. The licensee shall make inquiry of the consumer or use
13 available information databases to determine whether other deferred deposit loans are outstanding.
14 Regardless of the total of the loans, a licensee may not make a loan to a consumer who has two or more
15 deferred deposit loans outstanding.

16 (12) renewing, repaying, refinancing, or consolidating a deferred deposit loan with the proceeds
17 of another deferred deposit loan made to the same consumer. Upon termination of a deferred deposit
18 loan through the payment of the consumer's check by the drawee bank, the return of a check to a
19 consumer who redeems it for consideration, or any other method of termination, the licensee may not
20 enter into another deferred deposit loan with the same consumer for at least 30 days. However, a
21 licensee may without charge extend the term of the loan beyond the due date.

22 (13) accepting any collateral for a deferred deposit loan;

23 (14) charging any interest, fees, or charges other than those specifically authorized by [sections
24 1 through 14], including but not limited to:

25 (a) charges for insurance; or

26 (b) attorney fees or other collection costs;

27 (15) threatening to take any action against a consumer that is prohibited by [sections 1 through
28 14] or making any misleading or deceptive statements regarding the deferred deposit loan;

29 (16) making a misrepresentation of a material fact by an applicant in obtaining or attempting to
30 obtain a license;

(17) including any of the following provisions in loan documents required by [section 9]:

(a) a hold harmless clause;

(b) a confession of judgment clause;

(c) a waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer;

(d) a mandatory arbitration clause;

(e) any assignment of or order for payment of wages or other compensation for services;

(f) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or

(g) a waiver of any provision of [sections 1 through 14];

(18) selling any insurance of any kind whether or not sold in connection with the making or collection of a deferred deposit loan.

NEW SECTION. Section 13. Civil remedies. (1) The remedies provided in this section are cumulative and apply to licensees and unlicensed persons to whom [sections 1 through 14] apply.

(2) Any violation of [sections 1 through 14] constitutes an unfair or deceptive trade practice.

(3) The violation of any provision of [sections 1 through 14], except as the result of accidental or bona fide error of computation, renders a deferred deposit loan void, and the deferred deposit lender may not collect, receive, or retain any principal, interest, or other charges with respect to the loan.

(4) Any person found to have violated [sections 1 through 14] is liable to the consumer for actual and consequential damages, plus statutory damages of \$1,000 for each violation, plus costs and attorney fees.

(5) A consumer may sue for injunctive and other appropriate equitable relief to stop a person from violating any provisions of [sections 1 through 14].

(6) The consumer may bring a class action suit to enforce [sections 1 through 14].

(7) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer for a violation of [sections 1 through 14].

NEW SECTION. Section 14. Criminal penalties. Any person, including a member, officer, or director of a deferred deposit lender who knowingly violates [sections 1 through 14] is guilty of a

1 misdemeanor and, on conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding
2 6 months, or both.

3

4 NEW SECTION. **Section 15. Codification instruction.** [Sections 1 through 14] are intended to be
5 codified as an integral part of Title 31, chapter 1, and the provisions of Title 31, chapter 1, apply to
6 [sections 1 through 14].

7

8 NEW SECTION. **Section 16. Severability.** If a part of [this act] is invalid, all valid parts that are
9 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
10 applications, the part remains in effect in all valid applications that are severable from the invalid
11 applications.

12

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on February 11, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 427, HB 526, HB 558, HB
529, HB 556, 2/8/1999

Executive Action:

{Tape : 2; Side : A; Approx. Time Counter : 0 - 17}

Questions from Committee Members and Responses: Reps. Pavlovich, Lawson, Barnett, Squires, Juneau, Tuss, Bookout, McKenney, Krenzler and Simon question witnesses.

{Tape : 2; Side : A; Approx. Time Counter : 17 - 412}

Closing by Sponsor: Rep. Bergslagel closed.

{Tape : 2; Side : A; Approx. Time Counter : 412 - 500}

HEARING ON HB 526

Opening Statement by Sponsor: Rep. Mangen, HD 45 introduced HB 526. EXHIBIT(buh34a15)

{Tape : 2; Side : B; Approx. Time Counter : 0 - 176}

Proponents' Testimony: Senator J D Lynch, Butte

{Tape : 2; Side : B; Approx. Time Counter : 176 - 207}

Birney Harrington, store owner of Miles City

{Tape : 2; Side : B; Approx. Time Counter : 207 - 231}

Don Hutchinson, Div of Banking, Dept of Commerce

{Tape : 2; Side : B; Approx. Time Counter : 231 - 261}

Opponents' Testimony: Gary Hughes

{Tape : 2; Side : B; Approx. Time Counter : 261 - 264}

Questions from Committee Members and Responses: Reps. Squires, Stovall, Lawson, McKenney, Sliter, Tuss and Simon questions witnesses.

{Tape : 2; Side : B; Approx. Time Counter : 264 - 500}

{Tape : 3; Side : A; Approx. Time Counter : 0 - 100}

Closing by Sponsor: Rep. Mangen closed. HB 526

{Tape : 3; Side : A; Approx. Time Counter : 100 - 140}

HEARING ON HB 558

Opening Statement by Sponsor: Rep. Bitney HD 77 introduced HB 558.

{Tape : 3; Side : A; Approx. Time Counter : 140 - 176}

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on February 17, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: Rep. Rod Bitney (R)

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 639 and 640 additional
testimony heard (2/15/99)
Executive Action: HB 526, HB 639, HB 640, HB
506, HB 547, HB 546, HB 572,
HB 592, HB 615, HB 618, HB
624, HB 603, HB 604, HB 611,
HB 181, HB 521, HB 395, HB
521, HB 515, HB 516, HB 518,
HB 519, HB 529

HEARING ON HB 639 AND 640

Testimony: Montana Higher Education and University System
testified.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 21}

EXECUTIVE ACTION ON HB 526

Motion: REP. PAVLOVICH moved that HB 526 DO PASS.

{Tape : 1; Side : A; Approx. Time Counter : 21 - 31}

Motion/Vote: REP. PAVLOVICH moved that HB 526 BE AMENDED. Motion
carried unanimously.

{Tape : 1; Side : A; Approx. Time Counter : 31 - 41}

Motion/Vote: REP. PAVLOVICH moved that HB 526 DO PASS AS
AMENDED. Motion carried 14-4 with Masolo, McKenney, Sliter, and
Trexler voting no.

{Tape : 1; Side : A; Approx. Time Counter : 41 - 51}

EXECUTIVE ACTION ON HB 639 AND 640

Motion/Vote: REP. PAVLOVICH moved that HB 639 AND 640 DO PASS.
Motion carried 14-4 with Masolo, McKenney, Sliter, and Trexler
voting no.

{Tape : 1; Side : A; Approx. Time Counter : 51 - 114}

EXECUTIVE ACTION ON HB 506

Motion: REP. SLITER moved that HB 506 DO PASS.

{Tape : 1; Side : A; Approx. Time Counter : 114 - 124}

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on March 11, 1999 at
9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 47; HB 186, 3/4/1999
HB 526; HB 639, 3/4/1999
HB 640, 3/4/1999
Executive Action: HB 526; HB 615
HB 639; HB 640

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON HB 47

Sponsor: REP. SHIELL W. ANDERSON, HD 25, LIVINGSTON

after his name. At the end of the year, he reported \$503 still in the account, having earned \$3 in interest. On the form from the State Department of Revenue, he filled it out. It is on the honor system. So you could work out of a shoe box. At year's end, one must report to the IRS what was spent up to \$3000. Most banks offer checking accounts free with a minimum balance of \$100. Competition has made it so that self-administered accounts should not have much of a fee, if any.

{Tape : 1; Side : A; Approx. Time Counter : 39.9}

Closing by Sponsor:

REP. PECK closed. Credit unions are run by local boards, so answers to questions could vary as the credit unions have different rules and regulations. It seems that it would be highly unlikely to have fees attached. The bill is reasonable and I am actively involved in my own credit union. Thank you for a good hearing. **SEN. SPRAGUE** will carry the bill on the Senate Floor.

{Tape : 1; Side : B; Approx. Time Counter : 0}

HEARING ON HB 526

Sponsor: **REP. JEFF MANGAN, HD 45, GREAT FALLS**

Proponents: **Bernie Harrington, President, MT Financial Service Centers Assoc.**

Kelly Reisbeck, Advance Express, Helena

Judy Will, Cash Advantage, Helena

Darla Agtarap, Cash Advantage, Helena

Barbara Carpenter, Cash Advance, Bozeman

Don Hutchinson, Commissioner, Banking & Finance Div.

Opponents: **None**

Opening Statement by Sponsor:

REP. JEFF MANGAN, HD 45, GREAT FALLS. I bring to you today **HB 526**. This is a consumer protection bill. It focuses on the delayed deposit business. They take in post-dated checks. The number of these businesses has been increasing greatly over the past year. This bill moves to regulate them. There have been

complaints that the interest on the delayed deposit is exorbitant. In a one month period, one place was charging \$47 on \$100 loan. Then the charges kept going up depending on how many rollovers and how much money was being loaned. **REP. JOE QUILICI** had a similar bill and so we put the two bills together and out came **HB 526**.

This bill allows for a minimum loan of \$50 and a maximum loan of \$300. This is par for the industry. It allows for a fee of up to 25% of the value of the check with a maximum term of 31 days.

It provides for no rollovers which is very important. It provides for consumer notification of process, fees, regulation and complaint. It provides for state licensure and examination through the Department of Commerce, Division of Banking and Finance. A person can have a maximum of two loans at one time, but not to exceed the \$300 limit. States are scrambling to regulate this industry around the country. Currently four states prohibit these transactions. Thirteen states use regulations such as is being proposed. The other states are working on this issue. We are fortunate here because we have the industry behind us. We have worked with them and the Department of Commerce. Other states allow fee amounts from 5% to 25% as this bill will do.

The legitimate providers of delayed deposit loans have been doing a fine job for the past few years. It has been relatively quiet and not defrauding people. But in the past year we have had a tremendous influx of these delayed deposit outfits coming from other places. With no regulations, they are charging outrageous fees. I urge your favorable consideration.

{Tape : 1; Side : B; Approx. Time Counter : 7.5}

Proponents' Testimony:

Bernie Harrington, President, MT Financial Service Centers Assoc. Our members are delayed deposit lenders. We have seen a great growth of this industry in the past year and are interested in seeing regulations for consumer protection. We are good business people and are in the business to help people when they really need it. We don't want to get a black eye from others who come into Montana to rip the people off. We hope to work with the Department of Commerce as far as the rulemaking goes.

Kelly Reisbeck, Advance Express, Helena. I am here today to say that I am in support of **HB 526**.

Judy Will, Cash Advantage, Helena. I am in support of **HB 526**.

Darla Agtarap, Cash Advantage, Helena. We have been licensed as a consumer loan center from the first day of our operation. We are pleased with our organization and are in support of this bill.

Barbara Carpenter, Cash Advance, Bozeman. We support HB 526.

Don Hutchinson, Banking Commissioner, Banking & Financial Division, Department of Commerce. We will work closely with the industry. Drafting the bill gives us what we need to regulate the industry and I think it is a fair bill for the consumers of Montana. We support the bill. Thank you.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked **Commissioner Hutchinson** about pawn shops that do loans. Are they covered under the same restrictions? **Commissioner Hutchinson** said they would be eligible to be licensed under this bill if they want to do the delayed deposit loans. They would not be able to do delayed deposit loans under their license as a pawn broker.

Closing by Sponsor:

REP. MANGAN closed. I did forget to bring up one thing. I do have some technical amendments **EXHIBIT(bus55a04)**. Also, currently, pawn shops are providing this service and initially there was some reservation about whether pawn shops should be able to do this. A pawn shop loans money on a collateral basis; this service provides money on a non-collateral basis. So if they choose to do both services, they would have to have two licenses. Thank you for a good hearing. **SEN. LYNCH** will carry the bill on the Senate Floor.

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HEARING ON HB 639 AND HB 640

Sponsor: **REP. JEFF MANGAN, HD 45, GREAT FALLS**

Opening Statement by Sponsor: I bring before you HB 639 and HB 640 and request that they be tabled.

EXECUTIVE ACTION ON HB 639

Motion/Vote: SEN. MCCARTHY moved that HB 639 BE TABLED. Motion carried unanimously. 5-0

EXECUTIVE ACTION ON HB 640

Motion/Vote: SEN. MCCARTHY moved that HB 640 BE TABLED. Motion carried unanimously. 5-0

EXECUTIVE ACTION ON HB 526

Motion: SEN. MCCARTHY moved that HB 526 BE CONCURRED IN.

Discussion: Motion/Vote: SEN. MCCARTHY moved that HB 526 BE AMENDED (Exhibit 4). Motion carried unanimously. 5-0

Motion/Vote: SEN. MCCARTHY moved that HB 526 BE CONCURRED IN AS AMENDED. Motion carried unanimously. 5-0

SEN. J.D. LYNCH will carry the bill on the Senate Floor.

{Tape : 1; Side : B; Approx. Time Counter : 18.5}

EXECUTIVE ACTION ON HB 615

Motion: SEN. COCCHIARELLA moved that HB 615 BE CONCURRED IN.

Discussion: Motion: SEN. BERRY moved that HB 615 BE AMENDED, HB061502.abc EXHIBIT(bus55a05).

Discussion: Mr. Campbell explained the amendments. Basically, the wine industry is taken out of the bill and leaves it directly dealing with the beer industry. SEN. SPRAGUE said that he had asked for some research to be done and he had received it back. Other states currently regulate both beer and wine together. Therefore, it does not seem unusual to have these two business addressed at the same time in this bill. If this weren't important or a problem like the wine people indicated, why are they so worried about being regulated the same as the beer industry under this bill.